

August 28, 2009

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 2
TO
CONTRACT NO. 071B5200377
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Such Video, Inc. 111 East Grand River Avenue Lansing, MI 48906 e-mail: Karen@suchvideo.com	TELEPHONE (517) 484-0800 Karen Stefl
	VENDOR NUMBER/MAIL CODE (010)
	BUYER/CA: (517) 373-8622 Malynda Little
Contract Compliance Inspector: Lynn Sutfin (517) 333-5754 Television Commercial Production – Michigan State Police – Office of Highway Safety Planning	
CONTRACT PERIOD: From: October 01, 2005 To: September 30, 2010	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	

NATURE OF CHANGE(S):

Effective immediately, this Contract is hereby **EXTENDED** through **September 30, 2010**.
 All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per agency request (PRF dated 7/15/09), and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$300,000.00

January 13, 2008

STATE OF MICHIGAN
DEPARTMENT OF MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

CHANGE NOTICE NO. 1
TO
CONTRACT NO. 071B5200377
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Such Video, Inc. 111 East Grand River Avenue Lansing, MI 48906 e-mail: Karen@suchvideo.com	TELEPHONE (517) 484-0800 Karen Stefl
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CONTRACT PERIOD: From: October 01, 2005 To: September 30, 2009	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

NATURE OF CHANGE(S):

Effective September 30, 2008, this Contract is hereby EXTENDED through September 30, 2009. All other terms, conditions, specifications, and pricing remain unchanged.

AUTHORITY/REASON:

Per agency request (PRF dated 10/30/08), and DMB/Purchasing Operations' approval.

CURRENT AUTHORIZED SPEND LIMIT REMAINS: \$300,000.00

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET (DMB)
 OFFICE OF ACQUISITION SERVICES (OAS)
 P.O. BOX 30026, LANSING, MI 48909 OR 530 W. ALLEGAN, LANSING, MI 48933

December 8, 2005

**NOTICE
 TO
 CONTRACT NO. 071B5200377
 between
 THE STATE OF MICHIGAN
 and**

NAME & ADDRESS OF VENDOR Such Video, Inc. 111 East Grand River Avenue Lansing, MI 48906 e-mail: Karen@suchvideo.com	TELEPHONE Karen Stefl (517) 484-0800
	VENDOR NUMBER/MAIL CODE (010)
	BUYER/CA LITTLE, Malynda (517) 373-8622
Contract Compliance Inspector: Lynn Sutfin (517) 333-5754 Television Commercial Production - MSP – Office of Highway Safety Planning	
CONTRACT PERIOD: From: October 01, 2005 To: September 30, 2008	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	

The terms and conditions of this Contract for *commercial production of television services* are those of [ITB # 07115200121](#), this Contract Agreement, and the vendor's quote dated 03/07/2005. In the event of any conflicts between the specifications, terms, and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.

Maximum Contract Value Not To Exceed: \$300,000.00

STATE OF MICHIGAN
 DEPARTMENT OF MANAGEMENT AND BUDGET (DMB)
 OFFICE OF ACQUISITION SERVICES (OAS)
 P.O. BOX 30026, LANSING, MI 48909 OR 530 W. ALLEGAN, LANSING, MI 48933

CONTRACT NO. 071B5200377
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF VENDOR Such Video, Inc. 111 East Grand River Avenue Lansing, MI 48906 e-mail: Karen@suchvideo.com	TELEPHONE Karen Stefl (517) 484-0800 VENDOR NUMBER/MAIL CODE (010) BUYER/CA LITTLE, Malynda (517) 373-8622
Contract Compliance Inspector: Lynn Sutfin (517) 333-5754 Television Commercial Production - MSP – Office of Highway Safety Planning	
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TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION: <p>The terms and conditions of this Contract for <i>commercial production of television services</i> are those of ITB # 071I5200121, this Contract Agreement, and the vendor's quote dated 03/07/2005. In the event of any conflicts between the specifications, terms, and conditions indicated by the State and those indicated by the vendor, those of the State take precedence.</p> <p>Maximum Contract Value Not To Exceed: \$300,000.00</p>	

THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the [ITB No. 071I5200119](#). Orders for delivery of equipment will be issued directly by the Michigan State Police through the issuance of a Purchase Order Form.

All terms and conditions of the invitation to bid are made a part hereof.

FOR THE VENDOR: <hr/> Authorized Agent Signature Date Karen Stefl, Vice President <hr/> Authorized Agent Name (Print or Type) Such Video, Inc. <hr/> Firm Name	FOR THE STATE: <hr/> Signature Date Anthony J. DesChenes, Director <hr/> Name Services Division, Acquisition Services <hr/> Title
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Television – Commercial Production

Article 1 – Statement of Work (SOW) 4

 1.0 Project Identification..... 4

1.001 PROJECT REQUEST 4

1.002 BACKGROUND..... 4

 1.1 Scope of Work and Deliverables..... 5

1.101 IN SCOPE..... 5

1.102 OUT OF SCOPE..... 5

1.103 TECHNICAL ENVIRONMENT AND CAPABILITIES 6

1.104 WORK AND DELIVERABLE 7

 1.2 Roles and Responsibilities..... 8

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES..... 8

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES..... 8

1.203 OTHER ROLES AND RESPONSIBILITIES 9

 1.3 Project Plan..... 10

1.301 PROJECT PLAN MANAGEMENT..... 10

1.302 REPORTS..... 10

 1.4 Project Management..... 10

1.401 ISSUE MANAGEMENT..... 10

1.402 RISK MANAGEMENT 10

1.403 CHANGE MANAGEMENT 10

 1.5 Acceptance 10

1.501 CRITERIA 10

1.502 FINAL ACCEPTANCE 10

 1.6 Compensation and Payment..... 10

 1.7 Additional Terms and Conditions Specific to this SOW 13

Article 2 – General Terms and Conditions 14

 2.0 Introduction 14

2.001 GENERAL PURPOSE..... 14

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR 14

2.003 NOTICE 14

2.004 CONTRACT TERM 14

2.005 GOVERNING LAW..... 15

2.006 APPLICABLE STATUTES..... 15

2.007 RELATIONSHIP OF THE PARTIES 15

2.008 HEADINGS..... 16

2.009 MERGER 16

2.010 SEVERABILITY..... 16

2.011 SURVIVORSHIP..... 16

2.012 NO WAIVER OF DEFAULT 16

2.013 PURCHASE ORDERS 16

 2.1 Vendor/Contractor Obligations..... 16

2.101 ACCOUNTING RECORDS 16

2.102 NOTIFICATION OF OWNERSHIP 16

2.103 SOFTWARE COMPLIANCE 17

2.104 IT STANDARDS 17

2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE) 18

2.106 PREVAILING WAGE..... 18

2.107 PAYROLL AND BASIC RECORDS..... 18

2.108 COMPETITION IN SUB-CONTRACTING..... 19

2.109 CALL CENTER DISCLOSURE..... 19

 2.2 Contract Performance..... 19

2.201 TIME IS OF THE ESSENCE 19

2.202 CONTRACT PAYMENT SCHEDULE 19

2.203 POSSIBLE PROGRESS PAYMENTS 19

2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS (Actual performance rendered) 19

2.205 ELECTRONIC PAYMENT AVAILABILITY 19

2.206 PERFORMANCE OF WORK BY CONTRACTOR 19



2.3 Contract Rights and Obligations 20

2.301 INCURRING COSTS 20

2.302 CONTRACTOR RESPONSIBILITIES..... 20

2.303 ASSIGNMENT AND DELEGATION 20

2.304 TAXES 20

2.305 INDEMNIFICATION..... 21

2.306 LIMITATION OF LIABILITY 23

2.307 CONTRACT DISTRIBUTION 23

2.308 FORM, FUNCTION, AND UTILITY 23

2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION..... 23

2.310 RESERVED 23

2.311 TRANSITION ASSISTANCE..... 23

2.312 WORK PRODUCT..... 24

2.313 PROPRIETARY RIGHTS 24

2.314 WEBSITE INCORPORATION..... 25

2.4 Contract Review and Evaluation..... 25

2.401 CONTRACT COMPLIANCE INSPECTOR 25

2.402 PERFORMANCE REVIEWS..... 25

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS..... 25

2.5 Quality and Warranties..... 25

2.501 PROHIBITED PRODUCTS 25

2.502 RESERVED 26

2.503 RESERVED 26

2.504 GENERAL WARRANTIES (goods)..... 26

2.505 CONTRACTOR WARRANTIES..... 26

2.506 STAFF 27

2.507 SOFTWARE WARRANTIES..... 27

2.508 EQUIPMENT WARRANTY 28

2.509 PHYSICAL MEDIA WARRANTY 28

2.6 Breach of Contract 29

2.601 BREACH DEFINED..... 29

2.602 NOTICE AND THE RIGHT TO CURE..... 29

2.603 EXCUSABLE FAILURE 29

2.7 Remedies 30

2.701 CANCELLATION..... 30

2.702 RIGHTS UPON CANCELLATION 31

2.703 LIQUIDATED DAMAGES 31

2.704 STOP WORK..... 31

2.705 SUSPENSION OF WORK..... 32

2.8 Changes, Modifications, and Amendments 32

2.801 APPROVALS..... 32

2.802 TIME EXTENTIONS 32

2.803 MODIFICATION..... 32

2.804 AUDIT AND RECORDS UPON MODIFICATION..... 33

2.805 CHANGES..... 33



Article 1 – Statement of Work (SOW)

1.0 Project Identification

1.01 PROJECT

A. This document is a Contract AGREEMENT between

SUCH VIDEO INC.
111 East Grand River Avenue
Lansing, Michigan 48906
ATTN: Ms. Karen Stefl

and

STATE OF MICHIGAN
MICHIGAN STATE POLICE
OFFICE OF HIGHWAY SAFETY PLANNING

- B. This AGREEMENT is effective from 10/01/2005 THROUGH 09/30/2008. The State reserves two options to extend (see § 2.004, *Contract Term*), through no later than 09/30/2010.
- C. The cumulative maximum total that the State agrees to pay the Contractor for commercial television production services performed under this AGREEMENT shall not exceed \$300,000.00; see §1.6, *Compensation & Payment*, for more information.
- D. The service to be provided by Contractor is commercial television production services, with high quality video production and duplication for public service announcements and other traffic safety related projects for the Office of Highway Safety Planning (OHSP), a division of the Michigan State Police (MSP), for use in multiple high visibility public awareness campaign(s). This service will include writing scripts, producing video projects that utilize professional actors, music, and other sound and visual effects, with digital BETAcam equipment (as digital BETAcam produces a more professional quality product, which is part of the project objective).

1.002 BACKGROUND

A. Program Intent:

OHSP is charged with reducing deaths and injuries that result from traffic crashes through education and enforcement. In order to promote awareness of traffic safety issues and educate the public, OHSP needs high quality and professional commercial television production services to fulfill its responsibilities for both education and enforcement.

The key to successfully communicating with diverse target audiences is to listen to the needs of the target audience and then build effective campaigns based on those needs. In order to have a viable campaign, target audiences must first recognize that there is a problem. As a social marketing solution, the intent of this contract is that the vendor will seek to uncover the target audience's perception of a problem as defined by OHSP and anticipate or gauge the target population's likelihood to take action through education from public awareness campaigns under this Agreement.

OHSP expects to have campaigns with quantifiable and measurable results from the services procured under this agreement.

B. MSP / OHSP Project Objective:

The primary objective of this program's project is to increase safety belt use and decrease drunk driving through commercial production of radio public service announcements, to communicate and raise awareness of these and various other traffic safety messages. OHSP is also involved in other issues affecting traffic safety, such as: child passenger safety; mature drivers; traffic records; youth alcohol or substance abuse; bicycle safety; pedestrian safety; motorcycle driving; distracted driving; winter driving safety; etc.

Campaigns under this Agreement are targeted to particular audience populations, rather than the entire state. This contract will include assignments that address statewide enforcement issues but may also include narrower objectives and target specific education and awareness initiatives.



C. Level / Volume of Service:

In past years, OHSP typically has required approximately three (3) public service videos [approximately 30 or 60 seconds in length] and one to two (1 – 2) training videos [approximately 7 – 10 minutes in length] to be created annually. These projects can be of a smaller scale than regular television commercials or full-training session videos, and will require an individualized, detailed approach with considerable interaction and review with the State's program staff.

1.1 Scope of Work and Deliverables

1.101 IN SCOPE

- A. The Scope of work for television (video) commercial production services for public service announcements and staff training includes the following primary activities:
- Providing consultation when needed or requested;
 - Writing Scripts (including writing in different languages, when needed or requested);
 - Recording a production using professional actors, music, and other sound and visual effects, as needed;
 - Voice Narration, editing, and other production services, as needed;
 - Providing close captioning, when needed;
 - Providing studio space for OHSP staff to record public service announcements or training videos, or to conduct interviews via a digital subscriber line (DSL);
 - Locating and securing "on-location" sites to film;
 - Providing three creative executions per project assignment;
 - Providing video duplication from a master copy in all formats, including ½, ¾, one-inch, and BETA;
 - Transferring recorded footage to desired format for media, as requested;
 - Editing services, such as adding OHSP tags to the end of videos, color bars, or audio reference tones;
 - Providing files for posting to OHSP's website;
 - Attending meetings with OHSP staff to discuss project or traffic safety campaigns;
 - Other related television (video) commercial production services, as requested.
- B. Whenever called for, Contractor shall work *with* other OHSP contractors on campaigns, such as another public relations contractor, or with other state staff. In all of these interactions, Contractor's goal shall be the quality of execution, as well as consistency of message and graphic identity, across all mediums for maximum impact and result. Interactions with other contractors may include meetings, phone calls, email, fax, file sharing, contractor education, shared billing, exchange of research, copy and art files.

Contractor must recognize the relationship between the In-Scope and the Out-of-Scope activities. OHSP staff and other contractors may perform activities that work in concert with this contract's In-Scope activities:

For example, OHSP, or another state-contractor, may purchase advertising time for a public service announcement to air on television stations statewide. While it will not be Such Video's responsibility to purchase that advertising time, it will be Such Video's responsibility to create the broadcast duplication for that distribution within the timeframe given by the purchaser of the advertising time. Understanding that the In-Scope activities associated with the award of this contract do not exist independently from activities performed by other contractors, or by the OHSP Communications Division is an integral part of a team-oriented environment and relationship.)

Note: Contractor will not charge clients for travel, telephone, fax, or courier shipments; see §1.6, Compensation and Payment.

1.102 OUT OF SCOPE

The following activities will not be part of the State's contract under terms of this Agreement:

- Placing advertising buys;
- Scheduling or setting-up media interviews.



1.103 TECHNICAL ENVIRONMENT AND CAPABILITIES

A. General:

Contractor must have and maintain an extensive and varied library of audio/sound and visual effects, and music that are appropriate to use in traffic safety-related public service announcements or training videos. Such effects could include languages other than English (as needed or requested by the State), or close captioning, various forms of clip art, CD-ROM art and photos, design ideas, or original art appropriate for traffic safety campaigns. Final product executions must use Digital BETAcam equipment. Final products will also include video duplication from a master copy in all formats, including, Betacam SP, DVD, , and Digital BETAcam (see above, § 1.101, *In-Scope*). (See http://michigan.gov/dit/0,1607,7-139-30639_30655---,00.html for information on the State of Michigan, Department of Information Technology, *Standards*.)

B. Video Equipment, Software and Other Tools Available for Use, by Department

1. Production: Contractor shall maintain and operate:

- a. Digital Betacam, Mini DV and High Definition tape formats and its Arri SR2 16mm film camera as needed;
- b. Standard equipment package that includes a DVW 700 Digital Betacam camera, capable of a true film look with programmable chip technology, as well as digital field audio;
- c. Support gear that includes a full production Arri lighting kit, wireless microphones, lav and boom microphones, and field monitors with in-the-field vector scope and waveform monitors. Such Video can field any specialized production equipment, such as dollies, steady cam, jib arms, teleprompters or special lighting packages.

2. Post-Production: Contractor shall access, maintain, and operate:

- a. Component Digital Equipment, SVI's post-production online suite;
- b. AVID|DS Nitris edit platform; AVID edit platform (I would not recommend using the word Nitris for the contract, as this changes each year with software updates)
- c. Licenses with a royalty-free music library company with access to several thousands of cuts of broadcast music from which to choose. This music library is organized by type of music and is easy to navigate for finding music that is content-appropriate for our clients. Such Video also owns our own sound effect library for use in enhancing visual effects, or to boost natural sounds gathered in the field. (We change library music vendors every couple years to keep things fresh & new – no need to include Omni's name in the contract – just a general statement that we have a music library.)
- d. High Definition stock footage library – and include images such as wildlife, Michigan's natural beauty, general human interest shots, tourism, as well as holiday and travel. This High Definition stock footage library will be used when a video project needs additional footage to help communicate the diversity of Michigan's people and landscape, but the project's budget does not allow for extensive travel.
- e. Translation of videos and graphics into languages other than English, as well as close captioning finished products, upon OHSP request.

C. Graphics & Animation:

1. Contractor shall have and maintain a fully component digital non-linear editing suite, using Macintosh hardware, with powerful rendering engines such as the equivalent to a Digital Voodoo D1 real time video cards - and will be supported by softwares: as Adobe After Effects using the CineLook, and CineMotion plug-ins, as well as Photoshop, Final Cut Pro HD, and Lightwave 3D, and others.



The suite shall be capable of producing online high resolution uncompressed video, unlimited layers of compositing, and 2D and 3D animated graphics. (Just in case the Digital Voodoo video card gets upgraded)

2. Contractor shall have and maintain over 25,000 pieces of clip art, and hundreds of royalty free images from well-known sources such as Corbis Images, for use by Contractor's clients.
3. In addition to existing art, Contractor's graphics specialist will be a skilled artist who can create original art, iconography, graphic design, and graphic treatments for each project assignment, when needed.
4. Contractor shall support all compression formats as needed by OHSP in a project assignment – for distribution via e-mail, streaming and/or Flash video on the web, CD-Rom or DVD, utilizing software that is considered the industry standard for professional video encoding (to allow the multimedia designer to spend less time encoding and more time ensuring that the video's quality is not compromised as it is compressed).

1.104 WORK AND DELIVERABLE

Contractor shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

A. Integrated Program Project Approach

Contractor's approach to dealing with its OHSP must include working in a team environment:

1. This approach may differ slightly from project to project, depending on medium or size, etc. Typically, work on a new project will begin approximately four to five months before finished product /or deliverable is due to the OHSP.
2. All projects will begin with a meeting at OHSP to discuss goals, objectives, target audiences, historical activities, and concept direction. From that point forward, whatever form client/agency interaction takes place will be at the discretion of the OHSP. This can include, but not be limited to: meetings at OHSP facilities; file transfer via email; client access to view project status; telephone calls; faxes; or overnight delivery if needed.
3. Contractor will appoint an internal team to oversee all assigned OHSP projects with the intention that the team remains in place for the life of the contract and any extensions. This team will strive to develop open communication with OHSP personnel, ensure consistency of quality, message, and appearance, across all projects as appropriate and strive to provide multiple levels of accountability for OHSP so project information that can be obtained at any time.

B. Project Assignment and Product Development

1. Within five business days from notification of OHSP project assignment, the vendor will schedule a meeting at the OHSP office location to review a project assignment in detail and identify project deliverable(s) (e.g., one to three concepts as requested) with the designated agency program staff (OHSP staff).
2. Within ten business days from meeting with agency program staff to review a project assignment, vendor will submit a project outline (concept(s)), with a quote(s), for completion of project deliverable.

C. Project Calendar / Timeline

Within ten business days of OHSP approval and selection of a concept, vendor must complete a detailed calendar for the production, with due dates for the respective phases, sub-deliverables, and deliverables, which must then be subsequently approved by OHSP.



D. Project Deliverable(s), Edits, and Approval

Contractor will:

1. Submit one to three draft concepts (as requested with assignment) per project;
2. Be responsible for editing, incorporating all changes, state-staff suggestions, and needed modifications to project. (Contractor must schedule intermediary approval points for sub-deliverables with OHSP program staff.)

E. Final Acceptance of Project Deliverable

- Contractor fulfills the project by providing project deliverables (duplication of the final program onto the appropriate format for the audience), to the client as defined in the project outline/quotation as approved by OHSP.
- Final acceptance is reached only with formal acknowledgement from the OHSP that the project has been received in full.

F. Post Project Evaluation

- In keeping with the intent of OHSP Program goals and with this Contract, it is in the best interest of OHSP, the Contractor, and future project assignments, that Contractor's product shall be implemented in such a way that the State can evaluate the product's effectiveness following its completion and dissemination to the target market, as shall determined by OHSP.
- This evaluation could include, but shall not be limited to: attainment of quantifiable objectives as indicated in the initial project assignment; percentage of behavior change; cost effectiveness of marketing tools and tactics, etc.
- This review will enhance the impact of future projects and make maximum use of State budget dollars.

1.2 Roles and Responsibilities

1.201 CONTRACTOR STAFF, ROLES, AND RESPONSIBILITIES

David Such - President and Director of Photography

Such's responsibilities will include attending all creative meetings, writing all broadcast scripts, collaborating on longer-format scripts, acquiring all the video and film images for Such Video, as well as strategic administrative tasks typical of most small business owners.

Karen Stefl - Vice President and Producer / Director

Primary Point of Contact for this Contract Agreement

Besides project management, Stefl's roles and responsibilities will include attending all client meetings, creative collaboration with clients and the Such Video team, writing long-format scripts, all pre-production tasks, and administrative tasks typical of small businesses.

Joe Shaw, Senior Editor

Shaw's responsibilities will include all functions of editing including: recording narration audio; off-line and on-line edits; graphic integration; music selection and mix; as well as fulfillment services such as VHS and DVD dubs.

Dan Wiltshire, Graphics and Animation Specialist

Wiltshire's responsibilities will include generating all graphic elements at Such Video, animation, multimedia development such as CD-Rom and DVD authoring, as well as video compression for the web.

1.202 STATE STAFF, ROLES, AND RESPONSIBILITIES

Please see § 2.002 of this ITB for more information.



A. PURCHASE AUTHORITY

This Contract Award is issued by the State of Michigan, Department of Management and Budget (DMB), Acquisition Services, hereafter known as Acquisition Services, hereinafter referred to as Acquisition Services, for and on behalf of the state agency, the Michigan State Police, Office of Highway Safety Planning (OHSP).

Acquisition Services is the sole-point-of-contact in the State with regard to all procurement and contractual matters relating to the services described herein. Acquisition Services is the only office authorized to change, modify, amend, alter, clarify, etc., the prices, specifications, terms, and conditions of this award.

B. CONTRACT ADMINISTRATOR

Acquisition Services will remain the SOLE POINT OF CONTACT throughout the procurement process until the Director of Acquisition Services shall direct otherwise in writing. All communications concerning this solicitation and procurement must be addressed to the Acquisition Services assigned Contract Administrator:

Malynda Little, Senior Buyer
Michigan Department of Management and Budget
Office of Acquisition Services
2nd Floor, #K-2, Mason Building
P.O. Box 30026
Lansing, MI 48909
Email: littlem3@michigan.gov
Tel: (517) 373-8622
Fact: (517) 335-0046

C. CONTRACT COMPLIANCE INSPECTOR

Upon final execution of a contractual agreement resulting from this RFP, the state agency, OHSP, shall appoint and assign an employee to manage the agreement on a day-to-day basis. This will include (i) contract compliance inspection and monitoring; (ii) verifying service and work product delivery; (iii) validation of contractor invoices; and, (iv) contractor performance evaluation.

The OHSP has appointed and assigned its Office of Communications Program Staff as the Agency Contract Compliance Inspector. The contractor will work directly with and report to the Communications Section of OHSP. The OHSP Communications Program Staff will oversee the contract and specific assignment direction, and work with the contractor to establish and approve objectives and timelines. The contractor may be directed by the Communications Manager to work on a more regular basis with the agency-program (OHSP Office of Communications) staff to complete contract deliverables.

However, management of any contract resulting from this RFP implies no authority to change, modify, clarify, amend, or otherwise alter the prices, terms, conditions, and specifications to this RFP or to such contract(s) resulting from this RFP: that authority is retained solely by Acquisition Services. The agency-assigned Contract Compliance Inspector and day-to-day manager of a contract resulting from this RFP is:

Lynn Sutfin, Communications Division
Office of Highway Safety and Planning
Michigan State Police
4000 Collins Road
P.O. Box 30633
Lansing, MI 48909

1.203 OTHER ROLES AND RESPONSIBILITIES

RESERVED: Not applicable at this time.



1.3 Project Plan

1.301 PROJECT PLAN MANAGEMENT

1.302 REPORTS

RESERVED: Not applicable at this time.

1.4 Project Management

1.401 ISSUE MANAGEMENT

RESERVED: Not applicable at this time.

1.402 RISK MANAGEMENT

RESERVED: Not applicable at this time.

1.403 CHANGE MANAGEMENT

RESERVED: Not applicable at this time.

1.5 Acceptance

1.501 CRITERIA

The State will determine Acceptance of the Services or Deliverables provided under the SOW for a contract on an individual project assignment basis. The Vendor, in its quote for each project assignment, will articulate acceptance criteria for deliverables, and that criteria will then either be approved or rejected by the State. There are often multiple sub-deliverables that must be accepted before the project level deliverable can be presented and approved; these sub-deliverables must also be included in the Vendor's quote, as appropriate. Deliverables must be presented to the appropriate state program-person and accepted in writing. The basis of the State's ability to reject a deliverable will relate to the written requirements of the SOW and to the individual project campaign objectives.

1.502 FINAL ACCEPTANCE

Final Acceptance is when the project is completed and functions according to the requirements. Any intermediate acceptance of sub-Deliverables does not complete the requirement of Final Acceptance.

1.6 Compensation and Payment

A. Billing Method

- The unit rate billing method (rate per unit of service / commodity) shall be used in claiming reimbursement under this award.
- Contractor must provide a budget or quote with each project-assignment, and a rate for each unit of service shall be included with the quotation for each project assignment from OHSP. Total payment for each project will be determined on a job-to-job basis.
- Payment for service(s) will not be made until final acceptance is issued by the State.
- The contractor shall maintain a record system that documents the total number of units of service as defined in such a contract and delivered during the term of the agreement. These records shall document the specific units billed to the State.

B. Unit Rate Quotations

- All unit rates for which the vendor shall request reimbursement must be referenced in any contract awarded from this solicitation. The unit rates as quoted by the bidding vendor in its proposal shall remain fixed for the entire time the contract-agreement is effective. **The standard-production price quotations are intended to be all-inclusive**; additional costs for meetings with OHSP for approvals, etc. cannot be billed separately. Additional travel expenses not incorporated into the quoted rate-per-unit of service can only be paid with prior written State approval to incur the expense and only paid pursuant to State-travel policy located at http://www.michigan.gov/documents/Travel2003_59977_7.doc.



- The units of service shall be billed according to the definitions and rate-quotations as reflected in the cost-documentation stated below.
- The Maximum Amount the State agrees to pay Contractor for services performed under this Agreement from October 01, 2005 through September 30, 2008, shall not exceed: \$300,000.00.

Category	Line Item	Unit Cost	Unit Description
Production			
	Digital BetaCam Day Rate	\$700.00	day rate
	Digital Beta Field Tapes (D-40)	\$55.00	each
	Expendables (9 volt batteries)	\$3.00	each
Crew			
	Videographer	\$700.00	day rate
	Producer / Director	\$500.00	day rate
	Grip	\$350.00	day rate
	Gaffer	\$0.00	day rate
	Production Assistant	\$200.00	day rate
	MakeUp Artist	\$600.00	day rate
	MakeUp Kit rental	\$25.00	day rate
	Overtime (per hour)	\$200.00	per hour
Equipment			
	Teleprompter	\$200.00	day rate
	HMI Lighting: 575 watt	\$150.00	each /day rate
	HMI Lighting: 800 watt	\$160.00	each /day rate
	Jib Arm	\$175.00	day rate
	Dolly	\$350.00	day rate
	Backgrounds	\$50.00	day rate
Location			
	Location Scout	\$75.00	per hour
	Location Fee	\$200.00	as arranged
	Studio Rental	\$100 - \$1000	per day - depending upon if it is in Lansing or Detroit
Travel			
	Travel Time (non-working)	\$100.00	per hour
	Mileage	\$0.50	per mile
	Lodging	\$0.00	per state requirements
	Per Diem	\$0.00	per state requirements
Talent			
	Actor Day Rate	\$500 - \$1000	day rate - depends upon if speaking role or not - and if union or not
	Extra Day Rate	\$50 - \$200	depends upon role



Post-Production

AVID Digitizing	\$85.00	per hour
AVID Off-Line	\$200.00	per hour
AVID Edit On-Line	\$300.00	per hour
Render Time	\$100.00	per hour
Graphics	\$185.00	per hour
3D Animation	\$185.00	per hour
Master Tape Stock	\$38 - \$150	price per piece - based on length of tape
Closed Captioning	\$400-\$600	based on length of program
Video Compression for Web	\$150.00	per hour
DVD Authoring	\$185.00	per hour

Audio Post

Studio Time	\$200.00	per hour
Audio Talent	\$250 - \$500	depends upon length of script
Library Music	\$100.00	each cut of music
Audio Tape Stock	\$25.00	each

Duplication

Approval Copies - DVD	\$29.00	each
Approval Copies - VHS	\$15.00	each
Duplication Time	\$60.00	per hour
Deliverable Copies - DVD	\$4 - \$19	each - depending upon quantity ordered
Deliverable Copies - VHS	\$2.50 - \$15	each - depending upon quantity ordered
Broadcast Dubs - Beta SP	\$25.00	each
Shipping/Handling	\$3 - \$25	depending upon UPS Ground or Overnight

Creative

Creative Team	\$150.00	per hour
Writing	\$85.00	per hour
Production Coordination	\$60.00	per hour



1.7 Additional Terms and Conditions Specific to this SOW

A. Copyright: Proprietary Rights and Intellectual Property

The State of Michigan shall have copyright, property, and publication rights in all written or visual material or other work products developed in connection with any contract awarded from this solicitation. This includes all creative and intellectual materials, logos, artwork, photographs, negatives, film, visual productions, audio recordings, music, etc.; see ITB § 2.312 and 2.313, *General Terms & Conditions*, *Work Product*, and *Proprietary Rights*, for more information. The vendor shall not publish or distribute any material developed under such an agreement without prior written permission of the State.

B. Subcontractors

While the use of sub-contractors is not prohibited, the vendor shall not assign or enter into any subcontracts for an agreement awarded under this solicitation without obtaining prior written approval of the State of Michigan. The vendor awarded a contract must remain the point-of-contact for OHSP on this project if it does use independent or sub-contractors for parts of its service delivery. The selected contractor agrees that any assignee or subcontractor shall be subject to all conditions and provisions of the agreement, and that it is responsible for the performance of all assignees or subcontractors.



Article 2 – General Terms and Conditions

2.0 Introduction

2.001 GENERAL PURPOSE

This Contract award is for Television (Video) – Commercial Production services for the State of Michigan **to be used in high visibility public awareness campaigns.** Orders will be issued directly to the OHSP on the Purchase Order Contract Release Form.

2.002 ISSUING OFFICE AND CONTRACT ADMINISTRATOR

The Contract is issued by Acquisition Services, State of Michigan, Department of Management and Budget, hereinafter known as Acquisition Services, for and on behalf of the Michigan State Police - Michigan Office of Highway Safety Planning, hereinafter known as - Michigan Office of Highway Safety Planning (OHSP). Where actions are a combination of those of Acquisition Services and the State agency, the authority will be known as the State.

Acquisition Services is the sole point of contact in the State with regard to all procurement and contractual matters relating to the commodities and/or services described herein. Acquisition Services is the only office authorized to negotiate, change, modify, amend, alter, clarify, etc., the specifications, terms, and conditions of the Contract. Acquisition Services will remain the **SOLE POINT OF CONTACT** throughout the procurement process.

Vendor or Contractor proceeds at its own risk if it takes negotiation, changes, modification, alterations, amendments, clarification, etc., of the specifications, terms, or conditions of the contract from any individual or office other than Acquisition Services and the listed contract administrator

All communications covering this procurement must be addressed to contract administrator indicated below:

Department of Management and Budget
Office of Acquisition Services
Attn: Malynda Little
2nd Floor, Mason Building
P.O. Box 30026
Lansing, Michigan 48909
Tel: (517) 373-8622
Email: littlem3@michigan.gov

2.003 NOTICE

Any notice given to a party under this Contract must be written and shall be deemed effective, if addressed to such party as addressed below upon (i) delivery, if hand delivered; (ii) receipt of a confirmed transmission by facsimile if a copy of the notice is sent by another means specified in this section; (iii) the third (3rd) Business Day after being sent by U.S. mail, postage pre-paid, return receipt requested; or (iv) the next Business Day after being sent by a nationally recognized overnight express courier with a reliable tracking system.

2.004 CONTRACT TERM

The term of this Contract will be for three (3) years and will commence with the issuance of a Contract. This will be effective from approximately 10/01/2005 through 09/30/2008:

- A. Option.** The State reserves the right to exercise **two** one-year extension options, at the sole option of the State. Funding availability, Program need and effectiveness, Contractor performance, quality of products, price, cost savings, and the contractor's ability to deliver on time are some of the criteria that will be used as a basis for any decision by Acquisition Services to exercise an option year.



B. Extension. If the State determines that a one-year extension option is needed, then the State will provide the Contractor preliminary written notice of its intent to extend the contract at least sixty (60) days before the contract ending date, however, this preliminary notice does not commit the State to an extension. If the State determines that an extension is to be awarded, then a formal written offer will be provided to the Contractor within thirty (30) days prior to the ending date of the contract.

2.005 GOVERNING LAW

The Contract shall in all respects be governed by, and construed in accordance with, the laws of the State of Michigan. By signing this agreement, vendor consents to personal jurisdiction in the state of Michigan. Any dispute arising herein shall be resolved in the State of Michigan.

2.006 APPLICABLE STATUTES

The following statutes, rules, and laws are applicable to the performance of this contract; some statutes are reflected in the clauses of this contract. This list is NOT exhaustive.

MI Uniform Commercial Code (MIUCC) MCL 440. (All sections unless otherwise altered by agreement)

MI OSHA MCL §§ 408.1001 – 408.1094

Freedom of Information Act (FIOA) MCL §§ 15.231, et seq.

Natural Resources and Environmental Protection Act MCL §§ 324.101, et seq.

MI Consumer Protection Act MCL §§ 445.901 – 445.922

Laws relating to wages, payments of wages, and fringe benefits on state projects MCL §§ 408.551 – 408.558, 408.471 – 408.490, 1965 PA 390.

Department of Civil Service Rules and regulations

Elliot Larsen Civil Rights Act MCL §§ 37.2201, et seq.

Persons with disabilities Civil Rights Act MCL §§ 37.1101, et seq.

MCL §§ 423.321, et seq.

MCL § 18.1264 (law regarding debarment)

Davis-Bacon Act (DBA) 40 USCU §§ 276(a), et seq.

Contract Work Hours and Safety Standards Act (CWHSSA) 40 USCS § 327, et seq.

Business Opportunity Act for Persons with Disabilities MCL §§ 450.791 – 450.795

Rules and regulations of the Environmental Protection Agency

Internal Revenue Code

Rules and regulations of the Equal Employment Opportunity Commission (EEOC)

The Civil Rights Act of 1964, USCS Chapter 42

Title VII, 42 USCS §§ 2000e et seq.

The Americans with Disabilities Act (ADA), 42 USCS §§ 12101 et seq.

The Age Discrimination in Employment Act of 1967 (ADEA), 29 USCS §§ 621, 623 et seq.

The Old Workers Benefit and Protection Act of 1990 (OWBPA), 29 USCS §§ 626, et seq.

The Family Medical Leave Act of 1993 (FMLA), 29 USC §§ 651 et seq.

The Fair Labor Standards Act (FLSA), 29 USC §§ 201 et seq.

Pollution Prevention Act of 1990 (PPA) 42 U.S.C. §13106

Sherman Act, 15 U.S.C.S. § 1 et seq.

Robinson-Patman Act, 15 U.S.C.S. § 13 et. seq.

Clayton Act, 15 U.S.C.S. § 14 et seq.

2.007 RELATIONSHIP OF THE PARTIES

The relationship between the State and the Contractor is that of client and independent Contractor. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed an employee, agent, or servant of the State for any reason. The Contractor will be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

**2.008 HEADINGS**

Captions and headings used in the Contract are for information and organization purposes. Captions and headings, including inaccurate references, do not, in any way, define or limit the requirements or terms and conditions of this Contract.

2.009 MERGER

This document constitutes the complete, final, and exclusive agreement between the parties. All other prior writings and negotiations are ineffective.

2.010 SEVERABILITY

Each provision of the Contract shall be deemed severable from all other provisions of the Contract and, if one or more of the provisions of the Contract shall be declared invalid, the remaining provisions of the Contract shall remain in full force and effect.

2.011 SURVIVORSHIP

Any provisions of the Contract that impose continuing obligations on the parties including, but not limited to the Contractor's indemnity and other obligations shall survive the expiration or cancellation of the Contract for any reason.

2.012 NO WAIVER OF DEFAULT

The failure of a party to insist upon strict adherence to any term of the Contract shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of the Contract.

2.013 PURCHASE ORDERS

Orders for delivery of commodities and/or services may be issued directly by the State Departments through the issuance of a Purchase Order Form referencing this Contract (Blanket Purchase Order) agreement and the terms and conditions contained herein. Contractor is asked to reference the Purchase Order Number on all invoices for payment.

2.1 Vendor/Contractor Obligations**2.101 ACCOUNTING RECORDS**

The Contractor and all subcontractors shall maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the State of Michigan. Financial and accounting records shall be made available, upon request, to the State of Michigan, its designees, or the Michigan Auditor General at any time during the Contract period and any extension thereof, and for three years from expiration date and final payment on the Contract or extension thereof.

2.102 NOTIFICATION OF OWNERSHIP

A. The Contractor shall make the following notifications in writing:

1. When the Contractor becomes aware that a change in its ownership or officers has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify Acquisition Services within 30 days.
2. The Contractor shall also notify the Acquisition Services within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership or officers.



B. The Contractor shall:

1. Maintain current, accurate, and complete inventory records of assets and their costs;
2. Provide Acquisition Services or designated representative ready access to the records upon request;
3. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership or officer changes; and
4. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership or officer change.

2.103 SOFTWARE COMPLIANCE

The vendor warrants that all software for which the vendor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure year 2000 compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

2.104 IT STANDARDS

1. EXISTING TECHNOLOGY STANDARDS. The Contractor will adhere to all existing standards as described within the comprehensive listing of the State's existing technology standards at <http://michigan.gov/dit>.
2. PM METHODOLOGY STANDARDS. The State has adopted a standard documented Project Management Methodology (PMM) for use on all Information Technology (IT) based projects. This policy is referenced in the document titled "Project Management Methodology" – DMB Administrative Guide Procedure 1380.02 issued June 2000. Vendors may obtain a copy of this procedure, as well as the State of Michigan Project Management Methodology, from the Department of Information Technology's website at <http://www.michigan.gov/projectmanagement>.

The contractor shall use the State's PPM to manage State of Michigan Information Technology (IT) based projects. The Requesting agency will provide the applicable documentation and internal agency processes for the methodology. If the vendor requires training on the methodology, those costs shall be the responsibility of the vendor, unless otherwise stated.

3. ADHERENCE TO PORTAL TECHNOLOGY TOOLS. The State of Michigan, Department of Information Technology, has adopted the following tools as its Portal Technology development efforts:
 - Vignette Content Management and personalization Tool
 - Inktomi Search Engine
 - E-Pay Payment Processing Module
 - Websphere Commerce Suite for e-Store applications



Vendors must use the Portal Technology Tools to implement web content management and deployment efforts for agencies. Tools used for web-based application development must work in conjunction with Vignette and Inktomi. The interaction with Vignette and Inktomi must be coordinated with the Department of Information Technology, Enterprise Application Services Office, e-Michigan Web Development team.

Under special circumstances vendors that are compelled to use alternate tools must submit an exception request to the Department of Information Technology, Enterprise Application Services Office, e-Michigan Web Development team, for evaluation and approval of each alternate tool prior to proposal evaluation by the State. *(If the solution is to be hosted on the michigan.gov hosted environment, then the application may need to be compliant with Websphere, or need to be evaluated for compatibility with Websphere.)*

2.105 PERFORMANCE AND RELIABILITY EVALUATION (PARE)
RESERVED: Not applicable at this time.

2.106 PREVAILING WAGE

The rates of wages and fringe benefits to be paid each class of individuals employed by the Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall not be less than the wage rates and fringe benefits established by the Michigan Department of Consumer and Industry Service, Bureau of Safety and Regulation, Wage/Hour Division schedule of occupational classification and wage rates and fringe benefits for the local where the work is to be performed. The term Contractor shall include all general contractors, prime contractors, project managers, trade contractors, and all of their contractors or subcontractors and persons in privity of contract with them.

The Contractor, its subcontractors, their subcontractors, and all persons involved with the performance of this contract in privity of contract with the Contractor shall keep posted on the work site, in a conspicuous place, a copy of all wage rates and fringe benefits as prescribed in the contract. You must also post, in a conspicuous place, the address and telephone number of the Michigan Department of Consumer and Industry Services, the office responsible for enforcement of the wage rates and fringe benefits. You shall keep an accurate record showing the name and occupation of the actual wage and benefits paid to each individual employed in connection with this contract. This record shall be available to the State upon request for reasonable inspection.

If any trade is omitted from the list of wage rates and fringe benefits to be paid to each class of individuals by the Contractor, it is understood that the trades omitted shall also be paid not less than the wage rate and fringe benefits prevailing in the local where the work is to be performed.

2.107 PAYROLL AND BASIC RECORDS

Payrolls and basic records relating to the performance of this contract shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

The Contractor shall submit a copy of all payrolls to the Contract Administrator upon request. The payrolls submitted shall set out accurately and completely all of the information required to be maintained as indicated above.

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors upon request from the Contract Administrator.



The Contractor or subcontractor shall permit the Contract Administrator or representatives of the Contract Administrator or the State of Michigan to interview employees during working hours on the job.

If the Contractor or subcontractor fails to submit required records or to make them available, the Contract Administrator may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.

2.108 COMPETITION IN SUB-CONTRACTING

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

2.109 CALL CENTER DISCLOSURE

Vendor and/or all subcontractors involved in the performance of this contract providing call or contact center services to the State of Michigan must disclose the location of its call or contact center services to inbound callers. Failure to disclose this information shall be a material breach of this agreement.

2.2 Contract Performance

2.201 TIME IS OF THE ESSENCE

Contractor/Vendor is on notice that time is of the essence in the performance of this contract. Late performance will be considered a material breach of this contract, giving the State a right to invoke all remedies available to it under this contract.

2.202 CONTRACT PAYMENT SCHEDULE

All invoices should reflect actual work done. Specific details of invoices and payments will be agreed upon between the Contract Administrator, the Contract Compliance Inspector, and the Contractor after the proposed Contract Agreement has been signed and accepted by both the Contractor and the Director of Acquisition Services, Department of Management & Budget. This activity will occur only upon the specific written direction from Acquisition Services.

The specific payment schedule for any Contract(s) entered into, as the State and the Contractor(s) will mutually agree upon the result of this RFP. The schedule should show payment amount and should reflect actual work done by the payment dates, less any penalty cost charges accrued by those dates. As a general policy, statements shall be forwarded to the designated representative by the 15th day of the following month.

2.203 POSSIBLE PROGRESS PAYMENTS

RESERVED: Not applicable at this time.

2.204 POSSIBLE PERFORMANCE-BASED PAYMENTS (Actual performance rendered)

RESERVED: Not applicable at this time.

2.205 ELECTRONIC PAYMENT AVAILABILITY

Electronic transfer of funds is available to State contractors. Vendors are encouraged to register with the State of Michigan Office of Financial Management so the State can make payments related to this Contract electronically at www.cpexpress.state.mi.us.

2.206 PERFORMANCE OF WORK BY CONTRACTOR

RESERVED: Not applicable at this time.



2.3 Contract Rights and Obligations

2.301 INCURRING COSTS

The State of Michigan is not liable for any cost incurred by the Contractor prior to signing of the Contract. The State fiscal year is October 1st through September 30th. The Contractor(s) should realize that payments in any given fiscal year are contingent upon enactment of legislative appropriations. Total liability of the State is limited to terms and conditions of the Contract.

2.302 CONTRACTOR RESPONSIBILITIES

The Contractor will be required to assume responsibility for all contractual activities, whether or not that Contractor performs them. Further, the State will consider the Contractor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the anticipated Contract. If any part of the work is to be subcontracted, the Contract must include a list of subcontractors, including firm name and address, contact person and a complete description of work to be subcontracted. The State reserves the right to approve subcontractors and to require the Contractor to replace subcontractors found to be unacceptable. The Contractor is totally responsible for adherence by the subcontractor to all provisions of the Contract. Any change in subcontractors must be approved by the State, in writing, prior to such change.

2.303 ASSIGNMENT AND DELEGATION

The Contractor shall not have the right to assign this Contract, to assign its rights under this contract, or delegate any of its duties or obligations under the Contract to any other party (whether by operation of law or otherwise), without the prior written consent of the State. Any purported assignment in violation of this Section shall be null and void. Further, the Contractor may not assign the right to receive money due under the Contract without the prior written consent of the Director of Acquisition Services.

The Contractor shall not delegate any duties or obligations under the Contract to a subcontractor other than a subcontractor named and approved in the bid unless the Director of Acquisition Services has given written consent to the delegation.

Bidder must obtain the approval of the Director of Acquisition Services before using a place of performance that is different from the address that bidder provided in the bid.

2.304 TAXES

Sales Tax: For purchases made directly by the State of Michigan, the State is exempt from State and Local Sales Tax. Prices shall not include such taxes. Exemption Certificates for State Sales Tax will be furnished upon request.

Federal Excise Tax: The State of Michigan may be exempt for Federal Excise Tax, or such taxes may be reimbursable, if articles purchased under this Contract are used for the State's exclusive use. Certificates exclusive use for the purposes of substantiating a tax-free, or tax-reimbursable sale will be sent to the Contractor upon request. If a sale is tax exempt or tax reimbursable under the Internal Revenue Code, prices shall not include the Federal Excise Tax.

The State's Tax Exempt Certification is available for vendor viewing upon request to the Contract Administrator.



2.305 INDEMNIFICATION

General Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its departments, divisions, agencies, sections, commissions, officers, employees and agents, from and against all losses, liabilities, penalties, fines, damages and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties), arising from or in connection with any of the following:

1. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from (1) the product provided or (2) performance of the work, duties, responsibilities, actions or omissions of the Contractor or any of its subcontractors under this Contract.
2. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from a breach by the Contractor of any representation or warranty made by the Contractor in the Contract;
3. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or related to occurrences that the Contractor is required to insure against as provided for in this Contract;
4. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents arising out of or resulting from the death or bodily injury of any person, or the damage, loss or destruction of any real or tangible personal property, in connection with the performance of services by the Contractor, by any of its subcontractors, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable; provided, however, that this indemnification obligation shall not apply to the extent, if any, that such death, bodily injury or property damage is caused solely by the negligence or reckless or intentional wrongful conduct of the State;
5. Any claim, demand, action, citation or legal proceeding against the State, its employees and agents which results from an act or omission of the Contractor or any of its subcontractors in its or their capacity as an employer of a person.

Patent/Copyright Infringement Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State, its employees and agents from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of such equipment, software, commodity or service, or the use or reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States or foreign patent, copyright, trade secret or other proprietary right of any person or entity, which right is enforceable under the laws of the United States. In addition, should the equipment, software, commodity, or service, or the operation thereof, become or in the Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor shall at the Contractor's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the Contractor, (ii) replace or modify the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to Contractor, (iii) accept its return by the State with appropriate credits to the State against the Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.



Code Indemnification

To the extent permitted by law, the Contractor shall indemnify, defend and hold harmless the State from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

Indemnification Obligation Not Limited

In any and all claims against the State of Michigan, or any of its agents or employees, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under the Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefits acts, or other employee benefits acts. This indemnification clause is intended to be comprehensive. Any overlap in sub clauses, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other sub clause.

Continuation of Indemnification Obligation

The duty to indemnify will continue in full force and affect notwithstanding the expiration or early termination of the Contract with respect to any claims based on facts or conditions, which occurred prior to termination.

Indemnification Procedures

The procedures set forth below shall apply to all indemnity obligations under this Contract.

- (a) After receipt by the State of notice of the action or proceeding involving a claim in respect of which it will seek indemnification, the State shall promptly notify Contractor of such claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to so notify Contractor shall relieve Contractor of its indemnification obligations except to the extent that Contractor can demonstrate damages attributable to such failure. Within ten (10) days following receipt of written notice from the State relating to any claim, Contractor shall notify the State in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and prior to the State receiving Contractor's Notice of Election, the State shall be entitled to defend against the claim, at Contractor's expense, and Contractor will be responsible for any reasonable costs incurred by the State in defending against the claim during such period.
- (b) If Contractor delivers a Notice of Election relating to any claim: (i) the State shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim and to monitor and advise the State about the status and progress of the Defense; (ii) Contractor shall, at the request of the State, demonstrate to the reasonable satisfaction of the State, Contractor's financial ability to carry out its defense and indemnity obligations under this Contract; (iii) Contractor shall periodically advise the State about the status and progress of the defense and shall obtain the prior written approval of the State before entering into any settlement of such claim or ceasing to defend against such claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, the State shall have the right, at its own expense, to control the defense of that portion of such claim involving the principles of Michigan governmental or public law. Notwithstanding the foregoing, the State may retain control of the defense and settlement of a claim by written notice to Contractor given within ten (10) days after the State's receipt of Contractor's information requested by the State pursuant to clause (ii) of this paragraph if the State determines that Contractor has failed to demonstrate to the reasonable satisfaction of the State Contractor's financial ability to carry out its defense and indemnity obligations under this Section. Any litigation activity on behalf of the State of Michigan, or any of its subdivisions pursuant to this Section, must be coordinated with the Department of Attorney General.



In the event the insurer's attorney represents the State pursuant to this Section, the insurer's attorney may be required to be designated as a Special Assistant Attorney General by the Attorney General of the State of Michigan.

- (c) If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by the State as provided above, the State shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify the State, upon request of the State, Contractor shall promptly reimburse the State for all such reasonable costs and expenses.

2.306 LIMITATION OF LIABILITY

Except as set forth herein, neither the Contractor nor the State shall be liable to the other party for indirect or consequential damages, even if such party has been advised of the possibility of such damages. Such limitation as to indirect or consequential damages shall not apply to claims for infringement of United States patent, copyright, trademarks or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Contract calling for liquidated damages; to Contractor's indemnification obligations (2.305); or to court costs or attorney's fees awarded by a court in addition to damages after litigation based on this Contract.

The State's liability for damages to the Contractor shall be limited to the value of the Contract.

2.307 CONTRACT DISTRIBUTION

Acquisition Services shall retain the sole right of Contract distribution to all State agencies and local units of government unless other arrangements are authorized by Acquisition Services.

2.308 FORM, FUNCTION, AND UTILITY

If the Contract is for use of more than one State agency and if the good or service provided under this Contract do not meet the form, function, and utility required by a State agency, that agency may, subject to State purchasing policies, procure the good or service from another source.

2.309 ASSIGNMENT OF ANTITRUST CAUSE OF ACTION

For and in consideration of the opportunity to submit a quotation and other good and valuable consideration, the bidder hereby assigns, sells and transfers to the State of Michigan all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of payment and which relate solely to the particular goods, commodities, or services purchased or procured by this State pursuant to this transaction.

2.310 RESERVED

2.311 TRANSITION ASSISTANCE

If this Contract is not renewed at the end of this term, or is canceled prior to its expiration, for any reason, the Contractor must provide for up to **sixty (60) days** after the expiration or cancellation of this Contract, all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance.



2.312 WORK PRODUCT

Work Products shall be considered works made by the Contractor for hire by the State and shall belong exclusively to the State and its designees, unless specifically provided otherwise by mutual agreement of the Contractor and the State. If by operation of law any of the Work Product, including all related intellectual property rights, is not owned in its entirety by the State automatically upon creation thereof, the Contractor agrees to assign, and hereby assigns to the State and its designees the ownership of such Work Product, including all related intellectual property rights. The Contractor agrees to provide, at no additional charge, any assistance and to execute any action reasonably required for the State to perfect its intellectual property rights with respect to the aforementioned Work Product.

Notwithstanding any provision of this Contract to the contrary, any preexisting work or materials including, but not limited to, any routines, libraries, tools, methodologies, processes or technologies (collectively, the "Development Tools") created, adapted or used by the Contractor in its business generally, including any and all associated intellectual property rights, shall be and remain the sole property of the Contractor, and the State shall have no interest in or claim to such preexisting work, materials or Development Tools, except as necessary to exercise its rights in the Work Product. Such rights belonging to the State shall include, but not be limited to, the right to use, execute, reproduce, display, perform and distribute copies of and prepare derivative works based upon the Work Product, and the right to authorize others to do any of the foregoing, irrespective of the existence therein of preexisting work, materials and Development Tools, except as specifically limited herein.

The Contractor and its subcontractors shall be free to use and employ their general skills, knowledge and expertise, and to use, disclose, and employ any generalized ideas, concepts, knowledge, methods, techniques or skills gained or learned during the course of performing the services under this Contract, so long as the Contractor or its subcontractors acquire and apply such information without disclosure of any confidential or proprietary information of the State, and without any unauthorized use or disclosure of any Work Product resulting from this Contract.

2.313 PROPRIETARY RIGHTS

A. Software Ownership

Ownership of Work Product by State.

All Deliverables shall be owned by the State and shall be considered works made for hire by the Contractor for the State. The State shall own all United States and international copyrights, trademarks, patents or other proprietary rights in the Deliverables.

Vesting of Rights. With the sole exception of any preexisting licensed works identified in Appendix [X], the Contractor shall assign, and upon creation of each Deliverable automatically assigns, to the State, ownership of all United States and international copyrights, trademarks, patents, or other proprietary rights in each and every Deliverable, whether or not registered by the Contractor, insofar as any such Deliverable, by operation of law, may not be considered work made for hire by the Contractor for the State. From time to time upon State's request, the Contractor and/or its personnel shall confirm such assignment by execution and delivery of the assignments, confirmations of assignment, or other written instruments as the State may request. The State shall have the right to obtain and hold in its own name all copyright, trademark, and patent registrations and other evidence of rights that may be available for Deliverables.

Unless otherwise specifically agreed to by the State, before initiating the preparation of any Deliverable that is a Derivative of a preexisting work, the Contractor shall cause the State to have and obtain the irrevocable, nonexclusive, worldwide, royalty-free right and license to (1) use, execute, reproduce, display, perform, distribute internally or externally, sell copies of, and prepare Derivative Works based upon all preexisting works and Derivative Works thereof, and (2) authorize or sublicense others from time to time to do any or all of the foregoing.



2.314 WEBSITE INCORPORATION

State expressly states that it will not be bound by any content on the Contractor's website, even if the Contractor's documentation specifically referenced that content and attempts to incorporate it into any other communication, unless the State has actual knowledge of such content and has expressly agreed to be bound by it in a writing that has been manually signed by an authorized representation of the State.

2.4 Contract Review and Evaluation

2.401 CONTRACT COMPLIANCE INSPECTOR

Upon receipt at Acquisition Services of the properly executed Contract Agreement(s), the person named below will be allowed to oversee the Contract performance on a day-to-day basis during the term of the Contract. However, overseeing the Contract implies **no authority to negotiate, change, modify, clarify, amend, or otherwise alter the terms, conditions, and specifications of such Contract(s). That authority is retained by Acquisition Services.** The Contract Compliance Inspector for this project is:

Lynn Sutfin
Michigan State Police
Office of Highway Safety Planning –Communications Division
4000 Collins Road, Lansing, 48909
email: sutfin@michigan.gov
(517) 333-5754

2.402 PERFORMANCE REVIEWS

Acquisition Services, in conjunction with the Michigan Office of Highway Safety Planning, may review with the Contractor their performance under the Contract. Performance reviews shall be conducted quarterly, semi-annually or annually depending on Contractor's past performance with the State. Performance reviews shall include, but not limited to, quality of products/services being delivered and provided, timeliness of delivery, percentage of completion of orders, the amount of back orders, status of such orders, accuracy of billings, customer service, completion and submission of required paperwork, the number of substitutions and the reasons for substitutions, and other requirements of the Contract.

Upon a finding of poor performance, which has been documented by Acquisition Services, the Contractor shall be given an opportunity to respond and take corrective action. If corrective action is not taken in a reasonable amount of time as determined by Acquisition Services, the Contract may be canceled for default. Delivery by the Contractor of unsafe and/or adulterated or off-condition products to any State agency is considered a material breach of Contract subject to the cancellation provisions contained herein.

2.403 AUDIT OF CONTRACT COMPLIANCE/ RECORDS AND INSPECTIONS

The Contractor agrees that the State may, upon 24-hour notice, perform an audit at Contractor's location(s) to determine if the Contractor is complying with the requirements of the Contract. The Contractor agrees to cooperate with the State during the audit and produce all records and documentation that verifies compliance with the Contract requirements.

2.5 Quality and Warranties

2.501 PROHIBITED PRODUCTS

The State will not accept salvage, distressed, outdated or discontinued merchandise. Shipping of such merchandise to any State agency, as a result of an order placed against the Contract, shall be considered default by the Contractor of the terms and conditions of the Contract and may result in cancellation of the Contract by the State. The brand and product number offered for all items shall remain consistent for the term of the Contract, unless Acquisition Services has approved a change.

**2.502 RESERVED****2.503 RESERVED****2.504 GENERAL WARRANTIES (goods)**

Warranty of Merchantability – Goods provided by vendor under this agreement shall be merchantable. All goods provided under this contract shall be of good quality within the description given by the State, shall be fit for their ordinary purpose, shall be adequately contained and packaged within the description given by the State, shall conform to the agreed upon specifications, and shall conform to the affirmations of fact made by the vendor or on the container or label.

Warranty of fitness for a particular purpose – When vendor has reason to know or knows any particular purpose for which the goods are required, and the State is relying on the vendor's skill or judgment to select or furnish suitable goods, there is a warranty that the goods are fit for such purpose.

Warranty of title – Vendor shall, in providing goods to the State, convey good title in those goods, whose transfer is right and lawful. All goods provided by vendor shall be delivered free from any security interest, lien, or encumbrance of which the State, at the time of contracting, has no knowledge. Goods provided by vendor, under this agreement, shall be delivered free of any rightful claim of any third person by of infringement or the like.

2.505 CONTRACTOR WARRANTIES

The Contract will contain customary representations and warranties by the Contractor, including, without limitation, the following:

1. The Contractor will perform all services in accordance with high professional standards in the industry;
2. The Contractor will use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the services;
3. The Contractor will use its best efforts to use efficiently any resources or services necessary to provide the services that are separately chargeable to the State;
4. The Contractor will use its best efforts to perform the services in the most cost effective manner consistent with the required level of quality and performance;
5. The Contractor will perform the services in a manner that does not infringe the proprietary rights of any third party;
6. The Contractor will perform the services in a manner that complies with all applicable laws and regulations;
7. The Contractor has duly authorized the execution, delivery and performance of the Contract;
8. The Contractor is capable in all respects of fulfilling and shall fulfill all of its obligations under this contract.
9. The contract appendices, attachments, and exhibits identify all equipment and software services necessary for the deliverable(s) to perform and operate in compliance with the contract's requirements.
10. The Contractor is the lawful owner or licensee of any Deliverable licensed or sold to the state by Contractor or developed by Contractor under this contract, and Contractor has all of the rights necessary to convey to the state the ownership rights or license use, as applicable, of any and all Deliverables.



11. If, under this Contract, Contractor procures any equipment, software or other Deliverable for the State (including equipment, software and other Deliverables manufactured, re-marketed or otherwise sold by Contractor under Contractor's name), then in addition to Contractor's other responsibilities with respect to such items as set forth in this Contract, Contractor shall assign or otherwise transfer to the State or its designees, or afford the State the benefits of, any manufacturer's warranty for the Deliverable.
12. The contract signatory has the power and authority, including any necessary corporate authorizations, necessary to enter this contract, on behalf of Contractor.
13. The Contractor is qualified and registered to transact business in all locations where required.
14. Neither the Contractor nor any Affiliates, nor any employee of either, has, shall have, or shall acquire, any contractual, financial, business, or other interest, direct or indirect, that would conflict in any manner or degree with Contractor's performance of its duties and responsibilities to the State under this Contract or otherwise create an appearance of impropriety with respect to the award or performance of this Agreement. Contractor shall notify the State within two (2) days of any such interest that may be incompatible with the interests of the State.
15. All financial statements, reports, and other information furnished by Contractor to the State as part of its response to the ITB or otherwise in connection with the award of this Contract fairly and accurately represent the business, properties, financial condition, and results of operations of Contractor as of the respective dates, or for the respective periods, covered by such financial statements, reports, other information. Since the respective dates or periods covered by such financial statements, reports, or other information, there have been no material adverse changes in the business, properties, financial condition, or results of operations of Contractor. All written information furnished to the State by or behalf of Contractor in connection with this Contract, including its bid, is true, accurate, and complete, and contains no untrue statement of material fact or omits any material fact necessary to make such information not misleading.

2.506 STAFF

The State reserves the right to approve the Contractor's assignment of Key Personnel to this project and to recommend reassignment of personnel deemed unsatisfactory by the State.

The Contractor shall not remove or reassign, without the State's prior written approval any of the Key Personnel until such time as the Key Personnel have completed all of their planned and assigned responsibilities in connection with performance of the Contractor's obligations under this Contract. The Contractor agrees that the continuity of Key Personnel is critical and agrees to the continuity of Key Personnel. Removal of Key Personnel without the written consent of the State may be considered by the State to be a material breach of this Contract. The prohibition against removal or reassignment shall not apply where Key Personnel must be replaced for reasons beyond the reasonable control of the Contractor including but not limited to illness, disability, resignation or termination of the Key Personnel's employment.

2.507 SOFTWARE WARRANTIES

(a) Performance Warranty

The Contractor represents and warrants that Deliverables, after Final Acceptance, will perform and operate in compliance with the requirements and other standards of performance contained in this Contract (including all descriptions, specifications and drawings made a part of the Contract) for a period of ninety (90) days. In the event of a breach of this warranty, Contractor will promptly correct the affected Deliverable(s) at no charge to the State.

(b) No Surreptitious Code Warranty

The Contractor represents and warrants that no copy of licensed Software provided to the State contains or will contain in any Self-Help Code or any Unauthorized Code as defined below. This warranty is referred to in this Contract as the "No Surreptitious Code Warranty."



As used in this Contract, "Self-Help Code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than the licensee of the software. Self-Help Code does not include Software routines in a computer program, if any, designed to permit an owner of the computer program (or other person acting by authority of the owner) to obtain access to a licensee's computer system(s) (e.g. remote access via modem) for purposes of maintenance or technical support.

As used in this Contract, "Unauthorized Code" means any virus, Trojan horse, spyware, worm or other Software routines or components designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data; or to perform any other such actions. The term Unauthorized Code does not include Self-Help Code.

In addition, Contractor will use up-to-date commercial virus detection software to detect and remove any viruses from any software prior to delivering it to the State.

(c) Calendar Warranty

The Contractor represents and warrants that all software for which the Contractor either sells or licenses to the State of Michigan and used by the State prior to, during or after the calendar year 2000, includes or shall include, at no added cost to the State, design and performance so the State shall not experience software abnormality and/or the generation of incorrect results from the software, due to date oriented processing, in the operation of the business of the State of Michigan.

The software design, to insure calendar year rollover compatibility, shall include, but is not limited to: data structures (databases, data files, etc.) that provide 4-digit date century; stored data that contain date century recognition, including, but not limited to, data stored in databases and hardware device internal system dates; calculations and program logic (e.g., sort algorithms, calendar generation, event recognition, and all processing actions that use or produce date values) that accommodates same century and multi-century formulas and date values; interfaces that supply data to and receive data from other systems or organizations that prevent non-compliant dates and data from entering any State system; user interfaces (i.e., screens, reports, etc.) that accurately show 4 digit years; and assurance that the year 2000 shall be correctly treated as a leap year within all calculation and calendar logic.

(d) Third-party Software Warranty

The Contractor represents and warrants that it will disclose the use or incorporation of any third-party software into the Deliverables. At the time of Delivery, the Contractor shall provide in writing the name and use of any Third-party Software, including information regarding the Contractor's authorization to include and utilize such software. The notice shall include a copy of any ownership agreement or license that authorizes the Contractor to use the Third-party Software.

2.508 EQUIPMENT WARRANTY

RESERVED: Not applicable at this time.

2.509 PHYSICAL MEDIA WARRANTY

Contractor represents and warrants that each licensed copy of the Software provided by the Contractor is free from physical defects in the media that tangibly embodies the copy. This warranty does not apply to defects discovered more than thirty (30) days after that date of Final Acceptance of the Software by the State. This warranty does not apply to defects arising from acts of Excusable Failure. If the Contractor breaches this warranty, then the State shall be entitled to replacement of the non-compliant copy by Contractor, at Contractor's expense (including shipping and handling).



2.6 Breach of Contract

2.601 BREACH DEFINED

Failure to comply with articles, sections, or subsections of this agreement, or making any false statement in this agreement will be considered a material breach of this agreement giving the state authority to invoke any and all remedies available to it under this agreement.

In addition to any remedies available in law and by the terms of this contract, if the Contractor breaches Sections 2.508, 2.509, or 2.510, such a breach may be considered as a default in the performance of a material obligation of this contract.

2.602 NOTICE AND THE RIGHT TO CURE

In the event of a curable breach by the Contractor, the State shall provide the Contractor written notice of the breach and a time period to cure said breach described in the notice. This section requiring notice and an opportunity to cure shall not be applicable in the event of successive or repeated breaches of the same nature or if the State determines in its sole discretion that the breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage or destruction of any real or tangible personal property.

2.603 EXCUSABLE FAILURE

1. Neither party shall be liable for any default or delay in the performance of its obligations under the Contract if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Contract (either itself or through another contractor); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party; provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay provided such party promptly notifies the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.
2. If any of the above enumerated circumstances substantially prevent, hinder, or delay performance of the services necessary for the performance of the State's functions for more than 14 consecutive days, and the State determines that performance is not likely to be resumed within a period of time that is satisfactory to the State in its reasonable discretion, then at the State's option: (a) the State may procure the affected services from an alternate source, and the State shall not be liable for payments for the unperformed services under the Contract for so long as the delay in performance shall continue; (b) the State may cancel any portions of the Contract so affected and the charges payable hereunder shall be equitably adjusted to reflect those services canceled; or (c) the Contract will be canceled without liability of the State to the Contractor as of the date specified by the State in a written notice of cancellation to the Contractor. The Contractor will not have the right to any additional payments from the State as a result of any excusable failure occurrence or to payments for services not rendered as a result of the excusable failure condition. Defaults or delays in performance by the Contractor which are caused by acts or omissions of its subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a subcontractor is itself subject to any excusable failure condition described above and the Contractor cannot reasonably circumvent the effect of the subcontractor's default or delay in performance through the use of alternate sources, workaround plans or other means.



2.7 Remedies

2.701 CANCELLATION

The State may cancel this Contract without further liability or penalty to the State, its departments, divisions, agencies, offices, commissions, officers, agents, and employees for any of the following reasons:

1. Material Breach by the Contractor. In the event that the Contractor breaches any of its material duties or obligations under the Contract, which are either not capable of or subject to being cured, or are not cured within the time period specified in the written notice of breach provided by the State, or pose a serious and imminent threat to the health and safety of any person, or the imminent loss, damage or destruction of any real or tangible personal property, the State may, having provided written notice of cancellation to the Contractor, cancel this Contract in whole or in part, for cause, as of the date specified in the notice of cancellation.

In the event that this Contract is cancelled for cause, in addition to any legal remedies otherwise available to the State by law or equity, the Contractor shall be responsible for all costs incurred by the State in canceling the Contract, including but not limited to, State administrative costs, attorneys fees and court costs, and any additional costs the State may incur to procure the services required by this Contract from other sources. All excess re-procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

In the event the State chooses to partially cancel this Contract for cause charges payable under this Contract will be equitably adjusted to reflect those services that are cancelled.

In the event this Contract is cancelled for cause pursuant to this section, and it is therefore determined, for any reason, that the Contractor was not in breach of contract pursuant to the provisions of this section, that cancellation for cause shall be deemed to have been a cancellation for convenience, effective as of the same date, and the rights and obligations of the parties shall be limited to that otherwise provided in the Contract for a cancellation for convenience.

2. Cancellation For Convenience By the State. The State may cancel this Contract for its convenience, in whole or part, if the State determines that such a cancellation is in the State's best interest. Reasons for such cancellation shall be left to the sole discretion of the State and may include, but not limited to (a) the State no longer needs the services or products specified in the Contract, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the Contract services no longer practical or feasible, and (c) unacceptable prices for additional services requested by the State. The State may cancel the Contract for its convenience, in whole or in part, by giving the Contractor written notice 30 days prior to the date of cancellation. If the State chooses to cancel this Contract in part, the charges payable under this Contract shall be equitably adjusted to reflect those services that are cancelled.
3. Non-Appropriation. In the event that funds to enable the State to effect continued payment under this Contract are not appropriated or otherwise made available. The Contractor acknowledges that, if this Contract extends for several fiscal years, continuation of this Contract is subject to appropriation or availability of funds for this project. If funds are not appropriated or otherwise made available, the State shall have the right to cancel this Contract at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of cancellation to the Contractor. The State shall give the Contractor written notice of such non-appropriation or unavailability within 30 days after it receives notice of such non-appropriation or unavailability.
4. Criminal Conviction. In the event the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor, is convicted of a criminal offense incident to the application for or performance of a State, public or private Contract or subcontract; or convicted of a criminal offense including but not limited to any of the following: embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, attempting to influence a public employee to breach the ethical conduct standards for State of Michigan employees;



convicted under State or federal antitrust statutes; or convicted of any other criminal offense which in the sole discretion of the State, reflects upon the Contractor's business integrity.

5. Approvals Rescinded. The State may terminate this Contract without further liability or penalty in the event any final administrative or judicial decision or adjudication disapproves a previously approved request for purchase of personal services pursuant to Constitution 1963, Article 11, section 5, and Civil Service Rule 7. Termination may be in whole or in part and may be immediate as of the date of the written notice to Contractor or may be effective as of the date stated in such written notice.

2.702 RIGHTS UPON CANCELLATION

Termination Assistance. If this Contract (or any Statement of Work issued under it) is terminated for any reason prior to completion, Contractor agrees to provide for up to six (6) months after the termination all reasonable termination assistance requested by the State to facilitate the orderly transfer of such Services to the State or its designees in a manner designed to minimize interruption and adverse effect. Such termination assistance will be deemed by the parties to be governed by the terms and conditions of this Contract (notwithstanding its termination) other than any terms or conditions that do not reasonably apply to such termination assistance. Such termination assistance shall be at no additional charge to the State if the termination is for Contractor's Default pursuant to Section 2.602; otherwise, the State shall compensate Contractor for such termination assistance on a time and materials basis in accordance with the Amendment Labor Rates identified within this Contract agreement.

2.703 LIQUIDATED DAMAGES

RESERVED: Not applicable at this time.

2.704 STOP WORK

1. The State may, at any time, by written stop work order to the Contractor, require that the Contractor stop all, or any part, of the work called for by this Contract for a period of up to 90 days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this section. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the State shall either:
 - a) Cancel the stop work order; or
 - b) Cancel the work covered by the stop work order as provided in the cancellation section of this Contract.
2. If a stop work order issued under this section is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - a) The stop work order results in an increase in the time required for, or in the Contractor's costs properly allocable to the performance of any part of this Contract; and
 - b) The Contractor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
3. If the stop work order is not canceled and the work covered by the stop work order is canceled for reasons other than material breach, the State shall allow reasonable costs resulting from the stop work order in arriving at the cancellation settlement.
4. If a stop work order is not canceled and the work covered by the stop work order is canceled for material breach, the State shall not allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop work order.



An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop work order under this section. The State shall not be liable to the Contractor for loss of profits because of a stop work order issued under this section.

2.705 SUSPENSION OF WORK

The Contract Administrator may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contract Administrator determines appropriate for the convenience of the Government.

If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contract Administrator in the administration of this contract, or (2) by the Contract Administrator's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

A claim under this clause shall not be allowed:

- (1) For any costs incurred more than 20 days before the Contractor shall have notified the Contract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
- (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

2.8 Changes, Modifications, and Amendments

2.801 APPROVALS

The Contract may not be modified, amended, extended, or augmented except by a writing executed by the parties hereto, and any breach or default by a party shall not be waived or released other than in writing signed by the other party.

2.802 TIME EXTENTIONS

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of performance as described in the statement of work. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

2.803 MODIFICATION

Acquisition Services reserves the right to modify this contract at any time during the contract term. Such modification may include changing the locations to be serviced, additional locations to be serviced, method or manner of performance of the work, number of days service is to be performed, addition or deletion of tasks to be performed, addition or deletion of items, and/or any other modifications deemed necessary. Any changes in pricing proposed by the Contractor resulting from the proposed changes are subject to acceptance by the State. Changes may be increases or decreases. **IN THE EVENT PRICES ARE NOT ACCEPTABLE TO THE STATE, THE CONTRACT SHALL BE SUBJECT TO COMPETITIVE BIDDING BASED UPON THE NEW SPECIFICATION.**



The State reserves the right to add an item(s) that is not described on the item listing and is available from the Contract vendor. The item(s) may be included on the Contract, only if prior written approval has been granted by Acquisition Services.

2.804 AUDIT AND RECORDS UPON MODIFICATION

DEFINITION: records includes books, documents, accounting procedures and practices, and other data, regardless of whether such items are in written form, electronic form, or in any other form

Contractor shall be required to submit cost or pricing data with the pricing of any modification of this contract to the Contract Administrator in Acquisition Services. Data may include accounting records, payroll records, employee time sheets, and other information the state deems necessary to perform a fair evaluation of the modification proposal. Contract Administrator or authorized representative of the state shall have the right to examine and audit all of the contractor's records, including computations and projections, related to:

1. The proposal for modification;
2. The discussions conducted on the proposal, including those related to negotiation;
3. Pricing of the modification; or
4. Performance of the modification.

Contractor shall make available at its office at all reasonable times the materials described in the paragraphs above.

If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

2.805 CHANGES

- (a) The Contract Administrator may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In the Government-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.
- (b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contract Administrator that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contract Administrator written notice stating:
 - (1) The date, circumstances, and source of the order; and
 - (2) That the Contractor regards the order as a change order.
- (c) Except as provided in this clause, no order, statement, or conduct of the Contract Administrator shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.